

Joseph J. Barr, Jr., State Bar No.: 91940  
Gary L. Ritchie, State Bar No.: 140847  
LAW OFFICES OF  
JOSEPH BARR & ASSOCIATES  
501 West Broadway, Suite 2080  
San Diego, CA 92101-3579  
Telephone: (619) 235-0444  
Facsimile: (619) 235-0650

Attorneys for Defendants IN & OUT CAR WASH, INC. DBA NORTH PARK CAR  
WASH, a California corporation, and DOUBLE D & DOUBLE J, LLC, a California  
Limited Liability Company

**UNITED STATES DISTRICT COURT**  
**FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

KAREL SPIKES,

Plaintiff,

v.

IN & OUT CAR WASH, INC. dba, NORTH  
PARK CAR WASH; DOUBLE D &  
DOUBLE J, LLC and DOES 1 THROUGH  
10, Inclusive

Defendants.

**CASE NO. '07CV 2026 DMS (WMC)**

**ANSWER OF DEFENDANTS IN &  
OUT CAR WASH, INC. DBA NORTH  
PARK CAR WASH AND DOUBLE D &  
DOUBLE J, LLC TO PLAINTIFF'S  
CIVIL COMPLAINT**

**DEMAND FOR JURY TRIAL**

Defendants IN & OUT CAR WASH, INC. DBA NORTH PARK CAR  
WASH, a California corporation, and DOUBLE D & DOUBLE J, LLC, a California  
Limited Liability Company (hereinafter referred to collectively as "Defendants") hereby sever  
themselves from all other defendants, and answer Plaintiff KAREL SPIKES' (hereinafter referred  
to as "Plaintiff") Civil Complaint as follows:

1. Defendants admit that jurisdiction and venue in this court, as alleged in paragraphs 1  
and 2 of Plaintiff's Civil Complaint are proper.

2. These answering Defendants have no information or belief sufficient to enable them to  
answer the allegations of paragraphs 3, 6, 7, 8, 9, 12, 13, 14, 15, 18, 23, 25, 26, 27, 29, 30, 32, 33,  
and 34 of Plaintiff's Civil Complaint on file herein, and basing their denial on that ground, deny

generally and specifically each and every allegation contained therein.

3. Defendants deny paragraph 4 of Plaintiff's Civil Complaint, except, Defendant IN & OUT CAR WASH, INC. admits that it is a corporation organized and existing under the laws of the State of California, and operates the NORTH PARK CAR WASH business located at 3401 University Avenue, San Diego, California.

4. Defendants deny paragraph 5 of Plaintiff's Civil Complaint, except Defendant DOUBLE D & DOUBLE J, LLC admits that it is a California Limited Liability Company organized and existing under the laws of the State of California, and the owner of real property situated at 3401 University Avenue, San Diego, California.

5. These answering Defendants generally and specifically deny each and every allegation of paragraphs 10, 11, 17, 20, 21, and 22 of Plaintiff's Civil Complaint on file herein.

6. These answering defendants re-allege and incorporate their foregoing answers as set forth in paragraphs 1 through 5, inclusive, of this Answer to Plaintiff's Civil Complaint on file herein as though fully set forth herein in answering paragraphs 16, 19, 24, 28 and 31 of Plaintiff's Civil Complaint on file herein.

#### FIRST AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that each and every cause of action of Plaintiff's Civil Complaint fails to state facts sufficient to constitute causes of action against these answering Defendants.

#### SECOND AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that as to each and every cause of action, Plaintiff has failed, refused, and neglected to take reasonable steps to mitigate his alleged damages, if any, thus barring or diminishing Plaintiff's recovery herein.

#### THIRD AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that there has been no violation of the Unruh Civil Rights Act in that there has been no refusal by the responsible party keeping Plaintiff from entering the premises and the structure of the premises allows Plaintiff

1 to use the facilities in his wheelchair.

2 FOURTH AFFIRMATIVE DEFENSE

3 These answering Defendants are informed and believe and thereon allege Plaintiff's Civil  
4 Complaint does not state facts sufficient to constitute a claim for punitive damages.

5 FIFTH AFFIRMATIVE DEFENSE

6 These answering Defendants are informed and believe and thereon allege with respect to  
7 the alleged inaccessible condition mentioned in Plaintiff's Civil Complaint, the premises are in  
8 substantial, if not full, compliance with the requirements set forth in the ADA and California's  
9 Title 24 for existing facilities. Plaintiff is therefore not entitled to any damages.

10 SIXTH AFFIRMATIVE DEFENSE

11 These answering Defendants are informed and believe and thereon allege that Plaintiff is  
12 barred from recovery by virtue of the doctrine of unclean hands.

13 SEVENTH AFFIRMATIVE DEFENSE

14 These answering Defendants are informed and believe and thereon allege that the  
15 responsible party has modified their policies, practices and procedures as required by the ADA to  
16 afford individuals with a disability full and equal access to the goods, services, facilities,  
17 privileges, advantages and accommodations offered by the premises at issue.

18 EIGHTH AFFIRMATIVE DEFENSE

19 These answering Defendants are informed and believe and thereon allege that the  
20 responsible party has alternative methods of complying with the ADA, thereby providing full and  
21 equal access for individuals with a disability to the goods, services, facilities, privileges,  
22 advantages and accommodations offered at the premises at issue.

23 NINTH AFFIRMATIVE DEFENSE

24 With respect to the alleged inaccessible conditions mentioned in Plaintiff's Civil  
25 Complaint, these answering Defendants are informed and believe and thereon allege that the  
26 responsible party is in complete compliance with California Civil Code §§51, 52, and 54.1.

27 / / /

1 TENTH AFFIRMATIVE DEFENSE

2           These answering Defendants are informed and believe and thereon alleges that Plaintiff's  
3 Civil Complaint herein fails to allege facts sufficient to state a claim for the recovery of any civil  
4 penalty from these answering Defendants, and the imposition of such a penalty would violate the  
5 constitutional rights of these answering Defendants.

6 || ELEVENTH AFFIRMATIVE DEFENSE

7            These answering Defendants are informed and believe and thereon allege that Plaintiff's  
8 Civil Complaint and each alleged cause of action therein is barred by the applicable statute of  
9 limitations.

10 || TWELFTH AFFIRMATIVE DEFENSE

11        These answering Defendants are informed and believe and thereon allege that Plaintiff is  
12        barred from recovery by virtue of the doctrine of laches.

13 || THIRTEENTH AFFIRMATIVE DEFENSE

14           These answering Defendants are informed and believe and thereon allege that the  
15   discriminatory actions alleged by Plaintiff were not intentional. As a result, Plaintiff is not entitled  
16   to the relief requested in the Plaintiff's Civil Complaint.

17 || FOURTEENTH AFFIRMATIVE DEFENSE

18           These answering Defendants are informed and believe and thereon allege that any alleged  
19   failure by the responsible party to alter, repair, or modify the premises in question does not give  
20   rise to the cause of action by Plaintiff under the Unruh Act, since the Unruh Act specifically  
21   exempts such conduct from the scope of the act.

22 FIFTEENTH AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that the injuries and damages of which Plaintiff complains, and for which Plaintiff seeks recovery, if any, were the result of causes independent of any purported acts or omissions on the part of these answering Defendants, which causes operated as intervening and superceding causes, thereby cutting off any liability on the part of these answering Defendants.

SIXTEENTH AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that to the extent that any damage sustained by Plaintiff, or any other person, was proximately caused by Plaintiff or any other party's failure to mitigate damages by failing to exercise reasonable care in preventing such damage, Plaintiff is barred from recovering such damages against these answering Defendants.

SEVENTEENTH AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that Plaintiff has knowingly and intentionally waived any and all claims against these answering Defendants and is barred and estopped from any recovery therein.

EIGHTEENTH AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that some or all of the claims in the Plaintiff's Civil Complaint are barred because the removal of physical barriers, if any exist, by the responsible party is not readily achievable.

NINETEENTH AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that some or all of the claims in the Plaintiff's Civil Complaint are barred because the removal of physical barriers, if any exist, by the responsible party would be structurally impracticable.

TWENTIETH AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that some or all of the claims in Plaintiff's Civil Complaint are moot in that these answering Defendants is and/or has been in compliance with the laws, statutes, and regulations governing treatment of individuals with physical limitations.

TWENTY-FIRST AFFIRMATIVE DEFENSE

These answering Defendants are informed and believe and thereon allege that any alleged fault, act or omission on the part of these answering Defendants, if any, was neither the cause in fact nor the proximate cause of Plaintiff's damages or liabilities, if any. Rather, any such alleged

1 acts or omissions, if any, were only secondary, inconsequential, and indirect, and in no way  
2 contributed to or caused the alleged damages to Plaintiff.

3 TWENTY-SECOND AFFIRMATIVE DEFENSE

4 These answering Defendants are informed and believe and thereon allege that Plaintiff's  
5 Civil Complaint, and each cause of action contained therein, fails to allege facts sufficient to entitle  
6 Plaintiff to recover attorney's fees.

7 TWENTY-THIRD AFFIRMATIVE DEFENSE

8 These answering Defendants allege that Plaintiff failed to give timely notice, if any, of his  
9 claim and these answering Defendants have been subsequently prejudiced thereby.

10 TWENTY-FOURTH AFFIRMATIVE DEFENSE

11 These answering Defendants allege that Plaintiff's Civil Complaint, and every claim  
12 asserted therein, is premature.

13 TWENTY-FIFTH AFFIRMATIVE DEFENSE

14 These answering Defendants allege that the court has no subject matter jurisdiction over the  
15 claims alleged in Plaintiff's Civil Complaint because, among other things, these answering  
16 Defendants is informed and believes that Plaintiff is not within the class that the Americans With  
17 Disabilities Act was intended to protect from unlawful discrimination on the basis of disability and  
18 Plaintiff is not an aggrieved person under the Americans With Disabilities Act.

19 TWENTY-SIXTH AFFIRMATIVE DEFENSE

20 These answering Defendants allege that Plaintiff has no standing to assert the claims  
21 alleged in Plaintiff's Civil Complaint because, among other things, these answering Defendants are  
22 informed and believe that Plaintiff is not within the class that the Americans With Disabilities Act  
23 was intended to protect from unlawful discrimination on the basis of disability and Plaintiff is not  
24 an aggrieved person under the Americans With Disabilities Act nor any other law similar to or  
25 authorizing suits under the Americans With Disabilities Acts.

26 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

27 These answering Defendants allege that at all times mentioned in Plaintiff's Civil  
28

1 Complaint, that admittance of Plaintiff to the subject premises would require construction,  
2 alteration, or structural modification of the subject building.

3 TWENTY-EIGHTH AFFIRMATIVE DEFENSE

4 These answering Defendants allege that these answering Defendants have not carried out  
5 any construction alterations to the subject property which would trigger access requirements under  
6 federal or state law.

7 TWENTY-NINTH AFFIRMATIVE DEFENSE

8 These answering Defendants are informed and believe and thereon allege that the access  
9 requirements sought in Plaintiff's Civil Complaint are not reasonably or readily achievable.

10 THIRTIETH AFFIRMATIVE DEFENSE

11 These answering Defendants are informed and believe and thereon allege that Plaintiff is  
12 not entitled to recover punitive damages against these answering Defendants because these  
13 answering Defendants did not authorize, have advance knowledge of, or ratify in any way the acts  
14 and/or omissions alleged in Plaintiff's Civil Complaint.

15 THIRTY-FIRST AFFIRMATIVE DEFENSE

16 These answering Defendants are informed and believe and thereon allege that as to each  
17 alleged cause of action, Plaintiff's Civil Complaint is barred as the requested relief would  
18 constitute an undue hardship on these answering Defendants.

19 THIRTY-SECOND AFFIRMATIVE DEFENSE

20 These answering Defendants are informed and believe and thereon allege that Plaintiff has  
21 failed to exhaust the administrative remedies available to him under 42 U.S.C. 12188, 42 U.S.C.  
22 §2000a-3(c), and California Civil Code §55.1, and thus is not entitled to any relief.

23 THIRTY-THIRD AFFIRMATIVE DEFENSE

24 These answering Defendants are informed and believe and thereon alleges that their has  
25 insufficient knowledge or information upon which to form a belief as to whether they may have  
26 available additional, as yet unstated affirmative defenses to the Civil Complaint herein. These  
27 answering Defendants hereby reserve the right to assert these additional affirmative defenses in the  
28

1 event discovery indicates such would be appropriate.

2 WHEREFORE, Defendants IN & OUT CAR WASH, INC. DBA NORTH PARK CAR  
3 WASH, a California corporation, and DOUBLE D & DOUBLE J, LLC, a California  
4 Limited Liability Company, pray for judgement as follows:

- 5 a. That Plaintiff take nothing by reason of his Civil Complaint;  
6 b. That the Civil Complaint be dismissed with prejudice;  
7 c. For an award of reasonable attorney's fees and costs incurred herein; and  
8 d. For such other and further relief as the court may deem just and proper.

9 LAW OFFICES OF  
10 JOSEPH BARR & ASSOCIATES

11 DATED: \_\_\_\_\_

By: \_\_\_\_\_ s/ Joseph J. Barr, Jr.  
JOSEPH J. BARR, JR.  
Attorneys for IN & OUT CAR WASH, INC.  
DBA NORTH PARK CAR  
WASH, a California corporation, and DOUBLE  
D & DOUBLE J, LLC, a California  
Limited Liability Company